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Life Cycles of American Legal History Through Bob Dylan's Eyes

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Life Cycles of American Legal History Through Bob Dylan's Eyes

Cover Page Footnote

Assistant Professor of Law, Director of Clinical Education, Pepperdine University School of Law. This work would not have been possible without the invaluable help of Pepperdine law School Librarian Jennifer Allison, research assistants Catherine Moore and Sarah peter, and editor Abigail J. Snider. I wish to thank my husband Steve, and my children Abby, Claire, and Chrisopher. but mostly I would like to thank Mr. Dylan. This Article is dedicated to the memory of Anthony Serafino (1987-2011), blessed be his memory.

LIFE CYCLES OF AMERICAN LEGAL HISTORY THROUGH BOB DYLAN'S EYES

*Laurie Serafino**

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INTRODUCTION

“[T]hey try to turn a man into a mouse.”¹

* Assistant Professor of Law, Director of Clinical Education, Pepperdine University School of Law. This work would not have been possible without the invaluable help of Pepperdine Law School Librarian Jennifer Allison, research assistants Catherine Moore and Sarah Peter, and editor Abigail J. Snider. I also wish to thank my

“*Lessons of life can’t be learned in a day.*”²

Bob Dylan believes that America passes through cycles of change that correlate to patterns of discrimination and revolution.

The time surrounding the Civil War is an example of a cycle of revolution in Dylan’s eyes. In his autobiography, *Chronicles*, Dylan states that, during the Civil War, “America was put on the cross, died and was resurrected The god-awful truth of that would be the all-encompassing template behind everything that I would write.”³ Dylan continues:

As for what time it was, it was always just beginning to be daylight It was always the same pattern. Some early archaic period where society grows and develops and thrives, then some classical period where the society reaches its maturation point and then a slacking off period where decadence makes things fall apart. I had no idea which one of these stages America was in. There was nobody to check with.⁴

This quote reveals Dylan’s disheartenment as patterns in history affirm to him that real, substantive change cannot be maintained. He refrains from stating what “stage[] America [is] in”⁵ because he knows that society will end up back at the beginning, albeit, perhaps with some improvement.

This Article will examine, from a legal perspective, Dylan’s ideas on social policy and change. I have identified periods in American history during which our nation “was put on the cross, died and was resurrected.”⁶ I chose to discuss these specific periods because of Dylan’s intense interest in them.

Despite his frustration with America’s inability to sustain lasting change, Dylan has a particular admiration for some of the leaders whom he believes improved America because they were honorable

husband Steve, and my children Abby, Claire, and Christopher. But mostly I would like to thank Mr. Dylan.

This Article is dedicated to the memory of Anthony Serafino (1987–2011), blessed be his memory. “Sometimes my burden seems more than I can bear/It’s not dark yet, but it’s getting there.” BOB DYLAN, *Not Dark Yet*, on TIME OUT OF MIND (Columbia Records 1997).

1. BOB DYLAN, *Hurricane*, on DESIRE (Columbia Records 1975).

2. BOB DYLAN, *Cross the Green Mountain*, on TELL TALE SIGNS: RARE AND UNRELEASED 1989–2006 (Columbia Records 2008).

3. BOB DYLAN, CHRONICLES 86 (2004) [hereinafter DYLAN, CHRONICLES].

4. *Id.* at 35.

5. *Id.*

6. *Id.* at 86.

and fair, stood up for the underdog, and fought hard against their enemies. This Article examines Dylan's views on American legal history with an emphasis on those key players.

This Article begins with an in-depth look at the treatment of African Americans before, during, and after the Civil War by looking at relevant legal statutes and Supreme Court cases. From this period, I examine Dylan's particular interest in abolitionist and human rights activist Thaddeus Stevens.

The second cycle of revolution to gain Dylan's attention is the struggle of the worker and immigrant during the twentieth century. Here, Dylan is impressed with Joe Hill, an immigrant leader of the labor movement. The story of Joe Hill illustrates the trampling of the traditional worker in America, from after the Civil War up until the mid-twentieth century. With the rise of unions and improved working conditions came the formation of a middle class. This altered social structure resulted in greater intolerance for discrimination toward African Americans, leading the United States into the Second Reconstruction during the 1960s—the civil rights movement.

The Article concludes by examining current domestic issues in the third cycle of revolution—specifically, how corporations exert significant domination over the political process. Corporate influence on issues of illegal immigration and public sector union rights in contemporary America is evident. Like the earlier periods in American history, this Third Death is perpetuated by corporate self-interest.

I. FIRST CRUCIFIXION: THE PRE-CIVIL WAR PERIOD

*“To see him obviously framed couldn't help but make me feel
ashamed to live in a land where justice is a game.”*⁷

The quote above is taken from a song about Rubin “Hurricane” Carter, a man Dylan felt was wrongly convicted of a triple homicide in 1966. The song's lyrics illustrate Dylan's lack of confidence in the integrity of the United States legal system and its failure to provide justice to persons who are discriminated against, a sentiment he expresses particularly about the Civil War.

The analysis will begin with what I call America's “First Crucifixion.” It was the period directly before the Civil War when extreme racial discrimination was the social norm. A close look at legislation

7. DYLAN, *Hurricane*, *supra* note 1.

and domestic disputes during this period illustrates the crucifixion of American society.

The Fugitive Slave Act of 1793 provided for the legal return of runaway slaves to their owners.⁸ Crucially, this law provided that federal fugitive slave laws superseded state fugitive slave laws,⁹ which essentially mandated the enforcement of slavery in the entire country. The United States Supreme Court first interpreted this statute in *Prigg v. Pennsylvania*.¹⁰ Edward Prigg was a Maryland citizen who arranged for the capture from Pennsylvania and return to Maryland of a fugitive slave and her children.¹¹ Prigg was initially convicted in Pennsylvania for violating the state's statutory ban on the return of fugitive slaves to their owners,¹² but the Court found the Pennsylvania statute to be unconstitutional and overturned Prigg's conviction.¹³ The Court ruled that slavery was protected by the United States Constitution;¹⁴ that the Fugitive Slave Act of 1793 was constitutional;¹⁵ that state laws interfering with the return of fugitive slaves were unconstitutional;¹⁶ and that slave owners or their agents could return alleged fugitives to slavery without an oral testimony or a written affidavit.¹⁷ The Court clearly asserted its support of slavery and diminished the rights of individual states to speak on the matter.

While the Court ruled that the Pennsylvania law was unconstitutional, Justice Story's¹⁸ majority opinion included this statement:

As to the authority so conferred upon state magistrates, while a difference of opinion has existed, and may exist still, on the point, in different states, whether state magistrates are bound to act under it,

8. See U.S. CONST. art. IV, § 2, *repealed by* U.S. CONST. amend. XIII.

9. See STEVEN LUBET, FUGITIVE JUSTICE, RUNAWAYS, RESCUERS, AND SLAVERY ON TRIAL 21–22 (2010). Among other provisions, the Fugitive Slave Act provided that a slaveholder could arrest a runaway slave in any part of the country, and that all local courts and authorities must assist in the return effort. *Id.* at 21. Further, the act made it a criminal offense to obstruct or hinder the claims process or to assist or harbor a fugitive. *Id.*

10. 41 U.S. (16 Pet.) 539, 541 (1842).

11. *Id.* at 539.

12. *Id.* at 543.

13. *Id.* at 625.

14. *Id.* at 613.

15. *Id.* at 622.

16. *Id.* at 625.

17. *Id.* at 540–41.

18. While Justice Story opposed slavery, he also sought to preserve the balance between state and federal power. Just one year prior to *Prigg*, Justice Story had ordered the release of the rebellious slaves on board *La Amistad*. See LUBET, *supra* note 10, at 31.

none is entertained by this Court, that state magistrates may, if they choose, exercise that authority, unless prohibited by state legislation.¹⁹

Thus, while individual states could not outlaw the return of slaves, the Court could not force them to affirmatively act to return slaves. In response to *Prigg*, many states redrafted their personal liberty laws.²⁰

Ironically, the ruling in *Prigg* was used both to support the return of runaway slaves and a state's right not to return runaway slaves. Anti-slavery advocates opposed the ruling in *Prigg*; they saw the opinion as a victory for slave-holders. Pro-slavery advocates opposed *Prigg* as well: anti-slavery lawyers and judges used Justice Story's language in *Prigg* to prevent the return of fugitives to slavery.²¹ Thus, the ruling in *Prigg* caused even more dissension between the Northern and Southern states and was one of the factors that necessitated the federal government's enactment of the Fugitive Slave Act of 1850.²²

Dylan was fascinated by one of the key political figures willing to speak out in opposition to slavery before the Civil War. Representative Thaddeus Stevens embodied Dylan's views and was the foremost anti-slavery advocate of his time. Of Stevens, Dylan said, "He made a big impression on me, [and] was inspiring."²³ Stevens was one of the country's most prominent anti-slavery lawyers, and perhaps the most powerful American political leader of his time.²⁴ Dylan said:

He grew up poor, made a fortune and from then on championed the weak and any other group who wasn't able to fight equally He got right in there, called his enemies a "feeble band of lowly reptiles who shun the light and who lurk in their own dens" [He] could have stepped out of a folk ballad.²⁵

19. *Prigg*, 41 U.S. (16 Pet.) at 622.

20. See *Slavery and the Making of America: Personal Property v. Personal Liberties*, EDUC. BROAD. CORP., <http://www.pbs.org/wnet/slavery/timeline/1842.html> (last visited Oct. 18, 2011). For example, in 1842, Georgia drafted a personal liberty law stating that it would never recognize free blacks as citizens. *Id.* Similarly, in 1844, North Carolina passed legislation to deny citizenship to blacks. *Id.* In 1843, Vermont, Ohio, and New York passed personal liberty laws. *Id.*; see also Paul Finkelman, *Prigg v. Pennsylvania and Northern State Courts: Anti-Slavery Use of a Pro-Slavery Decision*, 25 CIV. WAR HIST. 5, 35 (1979).

21. Finkelman, *supra* note 21, at 35.

22. *Id.*

23. DYLAN, CHRONICLES, *supra* note 3, at 40.

24. THOMAS FREDERICK WOODLEY, *THE GREAT LEVELER: THE LIFE OF THADDEUS STEVENS* 419 (1934).

25. DYLAN, CHRONICLES, *supra* note 3, at 40.

Dylan not only admired Stevens' dedication to the abolitionist movement and the attitude Stevens took toward his adversaries; he also integrated Stevens into his own work by saying Stevens "stepped out of a folk ballad."²⁶ Dylan viewed Stevens as a figure that epitomized the individual struggle to rise up against challenges and champion the overlooked.

Stevens' most prominent role was as the Chair of the House Ways and Means Committee.²⁷ A radical Republican, he was bitterly opposed to the Fugitive Slave Act of 1850.²⁸ Although the Act was intended as a compromise between the North and South, it led to riots, deaths, trials, and upheaval.²⁹ There were many reasons why Stevens and other Abolitionists were so vehemently opposed to the Fugitive Slave Act of 1850. Under the Act, as part of the Compromise of 1850, a slave catcher could obtain an order of removal authorizing the return of a runaway.³⁰ This power threatened the integrity of laws in states where slavery was illegal by allowing the arm of slavery to reach into free territories. As Larry Gara explains, "Returning men to slavery was nasty business and a measure which attempted to require it was very much out of step with public opinion in the states where slavery itself did not exist."³¹

Stevens called the Act an "extraordinary conspiracy against liberty," that would "compromise away the Constitution[.]" and predicted it would become "the fruitful mother of future rebellion, disunion and civil war."³² Stevens' strong, uncompromising stand against the Act upset those in favor of slavery; Stevens became the figure that embodied the resistance against the Act, and essentially slavery, in the

26. *Id.*

27. See FAWN MCKAY BRODIE, THADDEUS STEVENS: SCOURGE OF THE SOUTH 150 (1959).

28. The Fugitive Slave Act was the lynchpin of the Compromise of 1850, designed to enable reconciliation between the North and the South. LUBET, *supra* note 10, at 325. The idea was that both sides would get what they wanted: the North would be a free society and the South would be able to enforce its slavery laws. *Id.* It did not achieve its intended purpose; instead, it deepened the divide by propelling the problems of slavery into the North, and demonstrated to the South that the North would never cooperate on the issue of slavery. *Id.* Three successive pro-slavery administrations—those of Presidents Fillmore, Pierce, and Buchanan—enforced the Act. *Id.*

29. BRODIE, *supra* note 28, at 110–14.

30. See Anthony J. Sebock, *Judging the Fugitive Slave Acts*, 100 YALE L.J. 1835, 1835 n.5 (1991).

31. Larry Gara, *The Fugitive Slave Law: A Double Paradox*, in ABOLITIONISM AND AMERICAN LAW 267, 272 (John R. McKivigan ed., 1999).

32. WOODLEY, *supra* note 25, at 171.

House.³³ After one of Stevens' attacks on the Act, Howell Cobb, the Democratic Speaker of the House, said:

Our enemy has a general now. This man is rich, therefore, we cannot buy him. He does not want higher office, therefore we cannot allure him. He is not vicious, therefore, we cannot seduce him. He is in earnest. He means what he says. He is bold. He cannot be flattered or frightened.³⁴

Courts heard several cases involving the Act.³⁵ The most politically significant was the Castner Hanway trial, in which Stevens was lead counsel.³⁶ On the night of September 11, 1851, "a Maryland slaveholder, Edward Gorsuch, led five armed men, including a United States marshal, on a hunt for four escaped slaves who were said to be hiding" near Stevens' hometown of Christiana in Lancaster County, Pennsylvania.³⁷ It was almost daylight when the search party gathered at the stone house.³⁸ The marshal hammered on the door, and William Parker, an escaped slave, opened it.³⁹ Parker said, "Take another step and I'll break your neck."⁴⁰ The marshal retreated; simultaneously Parker's wife sounded a horn, and within minutes a crowd of African Americans armed with axes, pitchforks, corn cutters, and hoes surrounded the house.⁴¹

33. BRODIE, *supra* note 28, at 109–10.

34. *Id.* at 110.

35. In 1849, Luther Donnell was convicted of aiding a fugitive slave and her four children in their escape to Canada. *Donnell v. State*, 3 Ind. 480 (1852). In *Donnell*, the Indiana Supreme Court reversed the conviction, claiming that under *Prigg v. Pennsylvania*, federal law superseded a state law regarding aid to fugitive slaves. *Id.*

In 1854, Anthony Burns, a fugitive slave, was arrested and tried in Boston under the Fugitive Slave Act. CHARLES EMERY STEVENS, ANTHONY BURNS: A HISTORY 15 (1856), available at <http://docsouth.unc.edu/neh/stevens/stevens.html>. He was convicted and returned to Virginia despite a riot at the courthouse where he was being tried (known as the Boston Slave Riot) that was organized by black and white abolitionists. *Id.* at 42–47, 75–76, 122–23. A white federal marshal was killed during the riot. *Id.* at 43. Eventually Burns' freedom was purchased and he became a minister. *Id.* at 213, 216; see also EARL M. MALTZ, FUGITIVE SLAVE ON TRIAL: THE ANTHONY BURNS CASE AND ABOLITIONIST OUTRAGE 57 (2010).

36. THOMAS P. SLAUGHTER, BLOODY DAWN, THE CHRISTIANA RIOT AND RACIAL VIOLENCE IN THE ANTEBELLUM NORTH 116 (1991).

37. BRODIE, *supra* note 28, at 116.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

Castner Hanway, a young white miller, witnessed these events while riding by on his horse.⁴² After learning that Hanway was outside, the marshal demanded his help, as the Fugitive Slave Act commanded that all citizens aid in its execution.⁴³ Hanway refused to assist the marshal, however, saying, "I'll do nothing to help the Fugitive Slave Act or any other act."⁴⁴ Two Quakers nearby at the time also refused the marshal's order and advised him to leave the scene to "avoid bloodshed."⁴⁵ After shots rang out, the marshal and his men left the scene leaving Gorsuch, his son, and his nephew alone to fight the mob.⁴⁶ Gorsuch's son and nephew escaped, while Gorsuch was killed at the scene.⁴⁷

This killing was the first to result from the Fugitive Slave Act. Blame for it was "laid squarely at [Stevens'] door" due to the proximity of the events to Stevens' home and his stance against slavery.⁴⁸ Following this incident, the Christiana Riot broke out and created a national emergency.⁴⁹ Newspaper headlines prophesied the event as an encompassment of the bloody cataclysm to come: "Civil War, the First Blow Struck."⁵⁰ These events leading up to the Hanway trial perfectly illustrate the pre-Civil War hostility and tension that existed surrounding the heavily debated issue of slavery.

In response to the riots, the Fillmore Administration issued forty-one indictments against five whites (including Hanway) and thirty-six blacks for capital treason against the United States.⁵¹ Ultimately, Hanway was the only person brought to trial.⁵² He was alleged to

42. *Id.*

43. *Id.* The Act made violations of the enforcement mandate punishable with a fine and imprisonment. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 117.

47. *Id.*

48. *Id.*

49. *Id.* at 118.

50. See Ed Folsom, *Whitman, Dickinson & the Fugitive Slave Law*, THE CLASSROOM ELECTRIC (Oct. 8, 2011) <http://www.classroomelectric.org/volume2/folsom/fugitive/index-critintro.html> (last visited Oct. 18, 2011). Many already foresaw that war was coming. This headline appeared an entire decade before the Civil War actually broke out. *Id.*

51. LUBET, *supra* note 10, at 52. The case was heard in Philadelphia's Independence Hall, the building in which the Fugitive Slave Act of 1793 had been written into the Constitution sixty-four years earlier. *Id.*

52. *Id.* The defense team, led by Thaddeus Stevens, conceded that Hanway's resistance to the Fugitive Slave Act was illegal, but argued that Hanway was merely a bystander. *Id.* at 8-9.

have conspired against the government even though he had been unarmed and inactive at the scene.⁵³ The case outraged many because whites were prosecuted as accomplices to the runaway slaves for their failure to enforce the Act.⁵⁴ It brought whites into the issue of slavery by making them accountable for federal policy. Northern whites balked at the fact that the Act might force them to become involved in a slave rescue. They could not simply ignore the issue any longer.

Following the Hanway trial, the 1850s were marked by a “series of tumultuous trials that greatly contributed to the growing discord between the free and the slave states.”⁵⁵

The interference of Northerners with the enforcement of the Fugitive Slave Act of 1850 greatly outraged public opinion in the South, where Northerners were seen as conspirators against the “property rights” of slave owners.⁵⁶ As time went on, it seemed less and less likely that there could be a peaceful resolution to this matter.

Dylan, a prolific writer on the issue of slavery, focuses on how slavery divided and produced great schisms in society. About this period, Dylan says:

Everybody uses the same God, quotes the same Bible and law and literature. Plantation slavecrats of Virginia accused of breeding and selling their own children Anti-slave labor advocates inflaming crowds in Cincinnati, Buffalo and Cleveland, that if the Southern states are allowed to rule, the Northern factory owners would then be forced to use slaves as free laborers. This causes riots, too. You wonder how people so united by geography and religious ideals could become such bitter enemies. After a while you become aware of nothing but a culture of feeling, of black days, of schism, evil for evil, the common destiny of the human being getting thrown off course. It's all one long funeral song, but there's a certain imperfection in the themes, an ideology of high abstraction⁵⁷

The Fugitive Slave Acts of 1793 and 1850 were the defining documents of the struggle over slavery because they illustrated the rift between the federal and state governments, as well as between pro-slavery groups and Abolitionists. The fight over slavery continued to tear apart the country, and in 1861, the Civil War began.

53. *Id.*

54. BRODIE, *supra* note 28, at 116–18. The jury deliberated over Hanway's fate for twenty minutes and returned a verdict of not guilty. *Id.* at 118.

55. LUBET, *supra* note 10, at 1–2.

56. *Id.*

57. DYLAN, CHRONICLES, *supra* note 3, at 84–85.

II. FIRST DEATH: THE CIVIL WAR AND THE BIRTH OF THE MODERN CORPORATION

*"I dreamt a monstrous dream; something came up out of the sea,
swept through the land of the rich and the free."*⁵⁸

In Dylan's song *Cross the Green Mountain*, written about the Civil War, he sings about the War that split our country in two. The War proved America's resilience; it was both the "completion of the American Revolution and the beginning of a modern nation."⁵⁹

Prior to the War, the United States was a nation compiled of states that were clearly divided along the lines of slavery and other regionally specific interests.⁶⁰ The Civil War deepened these divisions; and widened the economic gaps between North and South due to the fundamental differences between capitalist industry and small artisan-ship.⁶¹ The War brought the nation's domestic disputes to a head, which severely tested the United States' unity under the federal government.⁶² No one knew the lasting effect the Civil War would have on the country.

The Civil War led to a significant change in the country's economy. In the Northern and Western regions, the onset of the War caused a corresponding boom in industry.⁶³ Shipyards built vessels for the naval blockade, contractors and manufacturers supplied equipment to the army, and sewing machines mechanized the garment trade.⁶⁴ Shoemaking machines allowed manufacturers to dramatically increase production, railroad companies handled record shipments of grain from the West, and the petroleum industry emerged.⁶⁵ With this growth in industry came corporate growth and its coinciding capitalist tendencies and influences.⁶⁶

In the North, the War widened the gap between the rich and poor. While businessmen incurred extraordinary wealth, the working-class

58. DYLAN, *Cross the Green Mountain*, *supra* note 2.

59. DAVID GOLDFIELD, *AMERICA AFLAME: HOW THE CIVIL WAR CREATED A NATION 1* (2011).

60. *See* LAWRENCE GOLDSTONE, *INHERENTLY UNEQUAL, THE BETRAYAL OF EQUAL RIGHTS BY THE SUPREME COURT, 1865–1903*, at 31 (2011).

61. *Id.*

62. *See id.*

63. *Id.*

64. *Id.*

65. GOLDFIELD, *supra* note 60, at 300–01.

66. GOLDSTONE, *supra* note 61, at 31–34.

did not equally benefit from the wartime economic boom.⁶⁷ In fact, the condition of working-class Americans was worse at the end of the War than it had been at the beginning.⁶⁸ To make matters worse, federal and state governments did not support workers in their fight to demand better treatment. The Lincoln administration had no qualms in suppressing striking workers by dispatching federal troops to quell various labor disturbances.⁶⁹ Several states enacted anti-union legislation, promoting societal inequity as workers possessed virtually no political voice or economic autonomy.⁷⁰

Meanwhile, the corporations that employed these workers experienced great success. The Civil War allowed corporations to ascend to power by creating an environment in which they naturally flourished.⁷¹ The federal government relied heavily on the industrial sector for war efforts, so it did not impose regulations to guard against monopolies, protect workers' rights, or provide limitations on production.⁷² The four years of fighting "created an environment in which the business class could assert extraordinary postwar influence."⁷³ As Dylan said, "[T]he real power is in the hands of small groups of people and I don't think they have titles."⁷⁴ Dylan articulated the growing reality of the time that real power was in the hands of those who dominated the economy and not necessarily in the hands of the elected representatives.

67. *Id.*

68. *Id.*

69. *Id.*

70. *See id.* "Northerners pondered the addition of workers, especially immigrant workers, to the list of those, like the Indian and the slaveholder, who stood in the way of inevitable progress." *Id.*

71. This rapid economic growth was a phenomenon known almost exclusively in the North. *See* GOLDSTONE, *supra* note 61, at 34. While the North enjoyed historic population growth and invigorated economic growth, the South failed to see population growth or the integration of industry in its economy. *Id.* at 33–34. Before the War, the South was dependent upon cash crops; after the War, the South's plantation economies relied more heavily on subsistence production and did not become economic powerhouses. *Id.*

72. *See* Carl J. Mayer, *Personalizing the Impersonal: Corporations and the Bill of Rights*, 41 HASTINGS L.J. 577, 584–85 (1990).

73. GOLDSTONE, *supra* note 61, at 31. The prosperity obtained by the generation of men who were born in the 1830s and profited from the Civil War is unmatched in American history; the men who accumulated such wealth and prosperity include Andrew Carnegie, John D. Rockefeller, Augustus Julliard, J.P. Morgan, and Jay Gould. *Id.* at 32.

74. *Bob Dylan Talks About the New Record with Bill Flanagan*, BOBDYLAN.COM, <http://www.bobdylan.com/conversation?page=2> (last visited Oct. 18, 2011) [hereinafter *Flanagan*].

While the War caused mass destruction, it also led to rapid expansion. America as it had been prior to the Civil War no longer existed, and the revamping of the economy due to industrial growth brought about the creation of the modern American corporation.⁷⁵ Thus, the “First Death” of America brought about a new social order.

III. RECONSTRUCTION I: THE RESURRECTION OF AMERICA DURING THE POST-CIVIL WAR PERIOD

*“But virtue lives and cannot be forgot Let them say that I walked in fair nature’s light, and that I was loyal to truth and to right.”*⁷⁶

Dylan’s lyric from *Cross the Green Mountain* reflects his belief that some fighting men maintained faith that their country would come out of the War improved. As tragic as Dylan believed the Civil War to be, perhaps out of the rubble the problems of society could be set right again. Thus, after the Civil War, a period Dylan called the “First Resurrection,” the nation began to address the gross social inequities that had developed within American society. The Reconstruction of the 1860s introduced America’s first attempts to enforce the equality promised in the nation’s founding documents and to enact measures to assist its poor and working class citizens.⁷⁷ This was a time when “Americans made their first attempt to live up to the noble professions of their political creed—something few societies have ever done.”⁷⁸ America finally promised to be the land of the free.

Thaddeus Stevens was one of the principal innovators of this change. He helped to draft the major legislation of the Reconstruction—the Fourteenth Amendment and the Reconstruction Act of

75. GOLDSTONE, *supra* note 61, at 31–32.

76. DYLAN, *Cross the Green Mountain*, *supra* note 2.

77. See GOLDSTONE, *supra* note 61, at 15. The Radical Republicans, led by Thaddeus Stevens in the House and Charles Sumner in the Senate, demanded that black Americans be granted full and equal citizenship with white Americans. *Id.* Stevens also supported the legislative push to give each adult man who had been freed “forty acres and a mule.” *Id.* Stevens once remarked, “If we do not furnish them with homesteads, and hedge them around with protective laws; if we leave them to the legislation of their late masters, we had better have left them in bondage.” *Id.* at 16. While President Lincoln was primarily concerned with preserving the nation, the Radical Republicans wanted to reshape the political, moral, and social landscape of the United States. *Id.*

78. ERIC FONER, RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, at xxvii (1988).

1867—both of which exemplified these reformist trends.⁷⁹ Stevens said that he “[i]ntended to revolutionize [Southerners] feelings and principles. This may startle feeble minds and shake weak nerves. So do all great improvements.”⁸⁰ The Reconstruction Acts transformed the South and promoted African American political activity: blacks began registering to vote, asserting their civil and property rights, and attending public schools.⁸¹

The Fourteenth Amendment overruled the *Dred Scott* decision of 1857, which held that slaves could not be citizens of the United States,⁸² and reinforced the political legitimacy of African Americans.⁸³ This document marked an important step towards the implementation of necessary measures to uphold the rights of African Americans.⁸⁴ The introduction of equality principles into the Constitution and into America’s vision of a strong national state would long endure as a legal legacy. These concepts showed a marked change in the way the nation’s leaders saw disadvantaged peoples. The War seemed to have changed America for the better.

The bounds of due process, however, were not set with the adoption of the Fourteenth Amendment, and the intended protections were eventually diminished. The *Slaughter-House Cases*⁸⁵ raised the

79. See BRODIE, *supra* note 28, at 10.

80. GOLDSTONE, *supra* note 61, at 16.

81. *Id.* at 29. The vast majority of blacks who registered to vote during this time were Republicans. *Id.*

82. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 427 (1857).

83. U.S. CONST. amend. XIV. The Amendment includes the Due Process Clause, which prohibits state and local governments from depriving persons of life, liberty, or property; the Equal Protection Clause, which requires that each state provide equal protection under the law to all people within its jurisdiction; and the Privileges or Immunities Clause, which was intended to incorporate the first eight amendments of the Bill of Rights against the state governments. *Id.*

84. See GOLDSTONE, *supra* note 61, at 139. The phrase “due process” appears in the Fifth and Fourteenth Amendments. U.S. CONST. amends. V, XIV, § 1. The general understanding and application of the phrase is that government cannot infringe on the basic rights of its citizens, and that all citizens must be afforded a full range of legal protections. See GOLDSTONE, *supra* note 61, at 137–38. By the 1870s, application of due process became complicated because the phrase was strictly interpreted as only pertaining to how a legal proceeding ought to be conducted. *Id.* at 139. This limitation permitted judges to apply their own interpretations of the intent behind due process. See *id.* The Court began to interpret due process questions under the framework of either “procedural” or “substantive due process.” *Id.* Goldstone claims that in time, the Fourteenth Amendment no longer applied to the protections of freedmen (as was intended by its drafters), but rather came to protect the interests of corporations to be free from the police and regulatory powers of the states. *Id.* at 137.

85. *Butchers’ Benevolent Ass’n of New Orleans v. Crescent City Live-Stock & Slaughterhouse Co.*, 83 U.S. (16 Wall.) 36 (1872). The *Slaughter-House Cases* were

issue of whether due process could be applied to protect the rights of a group of white workers.⁸⁶ The action stemmed from an effort by the City of New Orleans to prevent animal wastes from contaminating the city's drinking water. In 1859, the Louisiana legislature attempted to regulate butchers by forcing them to work for a private corporation to be established under state auspices from which the butchers would obtain licenses. The butchers brought suit and argued that this regulation violated their due process rights. The Supreme Court held, however, that it did not, as due process applied narrowly only to the protection of freedmen.⁸⁷

Of course, to insist that the postwar amendments had been incorporated into the Constitution for the sole purpose of ensuring equal rights for black Americans was not difficult in a case where black Americans' rights were not at issue. As will be seen, the Court pivoted smartly from its *Slaughter-Houses Cases* opinion when black Americans eventually did seek protection under the very amendments [the Court] insisted had been enacted solely for their benefit.⁸⁸

Dylan was saddened by what he saw as reversal of the progress toward equality saying,

After a while you become aware of nothing but a culture of feeling . . . the common destiny of the human being getting thrown off course. . . . There's a certain imperfection in the themes, an ideology of high abstraction, a lot of epic, bearded characters, exalted men who are not necessarily good.⁸⁹

so named because they consolidated three similar cases under one argument and opinion. The controversy grew out of an act of the Louisiana legislature entitled: "An act to protect the health of the City of New Orleans, to locate the stock landings and slaughter-houses, and to incorporate the Crescent City Live-Stock Landing and Slaughter-House Company," which was approved on March 8, 1869 and went into effect on June 1, 1869. *Id.*

86. *See id.* at 80.

87. *Id.* at 81. The majority agreed that the Amendments had been put into the Constitution solely for the protection of freedmen. *Id.*

88. GOLDSTONE, *supra* note 61, at 85.

89. DYLAN, CHRONICLES, *supra* note 3, at 85.

2011]

REVOLUTIONARY UPHEAVAL

1445

IV. AMERICA'S SECOND CRUCIFIXION: THE POST-RECONSTRUCTION PERIOD

*"He come in to the door, he couldn't get in, all because of the color of his skin."*⁹⁰

Once the federal troops were removed from the capitals of the remaining Confederate states, America's first cycle of change ended, and a new period began. After the Reconstruction and the establishment of postwar political and economic development, American society began to backpedal into norms of discrimination against blacks and immigrant workers. The period I call "America's Second Crucifixion" reversed the reforms implemented during "America's First Reconstruction."

There were two fallouts from the Reconstruction that fit into this period: first, the continuation of racism and discrimination caused by Jim Crow laws, and second, the protection of corporate interests that fostered an environment of inequality. Both show the ineffectiveness of the efforts to "resurrect" American society during Reconstruction.

A. Jim Crow

*"I's out there paintin' on the old woodshed, when a can a black paint it fell on my head, I went down to scrub and rub, but I had to sit in back of the tub."*⁹¹

Dylan's lyric from the song, *I Shall Be Free*, illustrates his belief that the color of one's skin should be meaningless and that racism is irrational. Unfortunately, his ideal of equality was not upheld and racism again reared its ugly head. Despite efforts to combat racial inequity and intolerance with the Reconstruction Acts, both continued to flourish:

[B]y the dawn of the Twentieth Century the United States had become the nation of Jim Crow laws, quasi slavery, and precisely the same two-tiered system of justice that had existed in the slave era. Throughout the South, black Americans could not go to school with whites, could not ride next to them in streetcars, sit next to them in theaters or restaurants, could not be buried in the same cemeteries, could not use the same public toilets; black Americans were denied

90. BOB DYLAN, *Oxford Town*, on THE FREEWHEELIN' BOB DYLAN (Columbia Records 1962).

91. BOB DYLAN, *I Shall Be Free*, on THE FREEWHEELIN' BOB DYLAN (Columbia Records 1962).

the right to vote, to sit on juries, and often . . . were denied the right to have a trial at all.⁹²

While slavery was illegal, the white population of the old Confederacy continued to trample over African Americans' rights in the decades after the collapse of Reconstruction. The federal government ignored cruelty and horrific acts of violence towards African Americans that were pervasive throughout the United States, but were concentrated in the South.⁹³ From 1890 to 1908, ten Southern states wrote new constitutions with provisions that included literacy tests, poll taxes, and grandfather clauses in order to reinstitute racially motivated restrictions on the voting process that disenfranchised blacks.⁹⁴

In fact, Goldstone claims that the United States Supreme Court aided in these discriminatory practices by allowing state laws to stand that compromised racial equality and overturning federal laws that sought to protect African American rights.⁹⁵ For example, in the 1876 case of *United States v. Cruikshank*, racially motivated voting restrictions were permitted to stand.⁹⁶ In 1883, the Court in *United States v.*

92. GOLDSTONE, *supra* note 61, at 12.

93. *See id.* at 186. "Between 1890 and 1903, 1,889 lynchings were conducted in the United States. In 1,405 of those cases, the victims were black." *Id.* Seventy to eighty percent of these lynchings occurred in the South. *Id.*

94. For example, Georgia passed a poll tax in 1871. *Race, Voting Rights, and Segregation: Direct Disenfranchisement*, UNIV. OF MICH., <http://www.umich.edu/~lawrace/disenfranchise1.htm> (last visited Oct. 18, 2011). It is estimated that the Georgia poll tax reduced overall voting by sixteen to twenty-eight percent and black voting by up to fifty percent. *Id.* By 1904, all former Confederate states had passed a poll tax. *Id.*

South Carolina enacted the first literacy test in 1882. *Id.* This "eight-box" ballot test required voters to put separate ballots in separate boxes. *Id.* For example, when a ballot for a House member was put into the box for governor, the ballot was thrown out. *Id.* Because literate voters could not assist illiterate voters, the ballot box system was essentially a literacy test, and it disenfranchised voters. *Id.*

Additionally, some states made voting registration difficult. *Id.* For example, voting was often at inconvenient times (planting season) and required detailed information sometimes unavailable to African Americans. *Id.*

In 1890, Mississippi passed an education and literacy test. *The Mississippi precedent: the education test of 1890*, AUSTL. NAT'L UNIV., http://epress.anu.edu.au/cw/mobile_devices/ch13s02.html (last visited Oct. 18, 2011). Other states followed suit with education and literacy tests: South Carolina in 1895, Louisiana in 1898, North Carolina in 1900, Alabama in 1901, Virginia in 1901, and Georgia in 1908. *Id.*

95. GOLDSTONE, *supra* note 61 at 187, 196. "By 1906, 83 percent of white males were registered to vote, compared to 2 percent of black [males]." *Id.* at 187.

96. 92 U.S. 542 (1875). In this case, the defendants were charged with conspiracy and argued that the counts lacked the necessary certainty and precision required by the established rules of criminal pleading. *Id.* at 559. There was no showing that the

Harris held that the Fourteenth Amendment could be used only to protect against violations of due process rights committed by state actors and not individual citizens.⁹⁷ In the 1883 *Civil Rights Cases*, the Court found the Civil Rights Act of 1875 to be unconstitutional.⁹⁸ The Court held that, although the Fourteenth Amendment prohibits discrimination by state and local governments, it does not give Congress the constitutional authority to outlaw racial discrimination carried out by private individuals.⁹⁹

In the 1896 case of *Plessy v. Ferguson*, the Supreme Court held that the Fourteenth Amendment did not prohibit private discriminatory actions.¹⁰⁰ The Court announced that it would uphold the constitutionality of state laws requiring racial segregation in private businesses, under the doctrine of “separate but equal.”¹⁰¹ *Plessy* was clearly a serious setback for African Americans struggling to achieve true equality.

Justice Harlan, the lone dissenter in *Plessy*, declared famously:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty.¹⁰²

defendants intended to hinder or prevent any right granted or secured by the Constitution. *Id.* at 556. No judgment of conviction could have been pronounced upon them. *Id.* at 559. The defendants had the right to have a specification of the charges against them so they could adequately present their defense. *Id.* at 557–58.

97. 106 U.S. 629, 638–39 (1883). Four black men were beaten and one was killed in jail. *Id.* at 629–32. The jailors were charged with violating the citizens’ right to equal protection under the law under a United States statute. *Id.* at 631. The Court ruled that the statute requiring equal protection was unconstitutional. *Id.* at 644. The Fourteenth Amendment could only be used against states’ violations of due process rights and not individuals. *Id.* at 639–44. The federal government did not have the right to legislate what constituted a crime; that determination was left to each individual state. *Id.* at 644.

98. 109 U.S. 3, 25–26 (1883).

99. *Id.* at 13–14.

100. 163 U.S. 537, 550–52 (1896).

101. *Id.* According to commentators, Plessy looked and acted like a well-spoken, well-dressed, hardworking white man. *See, e.g.,* GOLDSTONE, *supra* note 61, at 158. He purchased a first-class ticket within Louisiana and told the conductor he was black upon which he was told to move and was arrested after refusing. *Id.* at 159. The Court’s seven-justice majority ruled against Plessy. *Plessy*, 163 U.S. at 552.

102. *Plessy*, 163 U.S. at 559 (Harlan, J., dissenting).

He went on, however: “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.”¹⁰³

In a series of decisions spanning almost three decades, the Supreme Court’s rulings consistently entrenched racial hierarchy as a mandate of popular will. Motivated to maintain the South’s agricultural, plantation-based society, Jim Crow laws made it difficult for African Americans to save money or work independently of plantations.¹⁰⁴ Thus, plantation owners were able to continue to subjugate blacks and devise ways to keep them entrenched in labor.¹⁰⁵

Unlike the North and its industrial growth, the South stagnated in an agriculturally based economy that had been reliant on free labor.¹⁰⁶ African Americans, freed from slavery, had no option but to continue working on plantations when they discovered the harsh reality that there was no other work available.¹⁰⁷ Poor whites suffered from the influx of this new, cheap paid labor force, and their earning power was depressed along with that of blacks.¹⁰⁸ Thus, upward mobility proved elusive for both poor whites and newly freed slaves.¹⁰⁹

Poor whites in the South continued to focus their hatred on African Americans rather than the plantation owners who exploited them as cheap labor.¹¹⁰ As Dylan bluntly states, “But the poor white man’s

103. *Id.*

104. Ronald L. F. Davis, *Surviving Jim Crow: In-Depth Essay*, THE HISTORY OF JIM CROW, <http://www.jimcrowhistory.org/history/surviving2.htm> (last visited Oct. 18, 2011).

105. Legislation known as “Black Codes,” enacted primarily in Southern states both before and after the Civil War, expressly limited human rights protections for African Americans. Jason Hawkins, *The American Black Codes 1865–1866*, GEO. WASH. UNIV., <http://home.gwu.edu/~jjhawkin/BlackCodes/BlackCodes.htm> (last visited Oct. 18, 2011). Each Confederate state designed their own Black Codes that referred to “person[s] of color” and acted to prevent blacks from voting, holding office, and serving on juries. *Id.* They prohibited interracial marriages and often contained provisions regarding mandated labor of unemployed blacks. *Id.* The Black Codes were designed to restrict the movement of blacks out of the former Confederacy, thus ensuring a steady supply of cheap labor. *Id.* While Black Codes often did not endure, they were important because they served as precursors to Jim Crow laws. *Id.*

106. GOLDSTONE, *supra* note 61, at 188.

107. *Id.*

108. *Id.*

109. *Id.*

110. “The question of whether [whites] would vote their economic interests and side with blacks against the monied class, or their racial interests and side with the monied class against blacks was answered quickly and definitively. Poor whites preferred white aristocrats to African-Americans.” *Id.* at 130–31.

used in the hands of them all like a tool . . . [t]o keep up his hate so he never thinks straight.”¹¹¹ Although they were partially motivated by their own inherent racism towards African Americans, Dylan believes that powerful economic interests sought to manipulate poor whites to hate blacks in order to maintain the status quo.

There can be little doubt that the decisions of the United States Supreme Court to allow Jim Crow laws to stand were responsible for the Northern migration of many African Americans.¹¹² In 1910, seventy-five percent of blacks lived in rural areas and ninety percent of them lived in the South.¹¹³ By 1970, three-quarters of African Americans lived in cities and half outside Southern states.¹¹⁴ Thus, the Second Crucifixion, caused in part by Jim Crow, resulted in the Great Migration, which transformed American society.

B. The Growth of Corporate Influence

*“Good intentions can be evil You know that sometimes Satan comes as a man of peace.”*¹¹⁵

The powerful, newly developed corporate industrial economy greatly expanded the United States’ gross domestic product, giving corporations immense power in American society. At the outset of the Reconstruction Era, the business community, despite its conservative habits and politics,¹¹⁶ supported Thaddeus Stevens and the Radical Republicans.¹¹⁷ Industrial leaders realized that the agriculturally-

111. BOB DYLAN, *Only a Pawn in Their Game*, on THE TIMES THEY ARE A-CHANGIN’ (Columbia Records 1964).

112. GOLDSTONE, *supra* note 61, at 190. African Americans began to leave in great numbers in the years just before *Plessy*, and the flight increased dramatically in the ensuing decade. *Id.* at 190. Southern whites desperately discouraged this black emigration, as it diminished their labor force and put further stress on the already sluggish Southern economy. *Id.* at 192. Southern whites spread tales of Northern poverty and hardship. *Id.* Additionally, Blacks were told they would freeze to death in the winter. *Id.*

113. *Id.* at 193.

114. *Id.* A July 1, 2011, article in *USA Today* reported that “[d]uring the Great Migration, we had black people moving to the Northeast, the Midwest and the West Coast.” Larry Copeland, *Blacks Return to Southern Roots*, USA TODAY (July 1, 2011) http://www.usatoday.com/news/nation/census/2011-06-30-black-south-census-migration_n.htm.

115. BOB DYLAN, *Man of Peace*, on INFIDELS (Columbia Records 1984).

116. *Id.* at 96. Secretary of the Navy Gideon Welles wrote at the time in his diary: “[I]ntense partisanship instead of philanthropy is the root of the movement.” *Id.* at 97.

117. C. VANN WOODWARD, *THE BURDEN OF SOUTHERN HISTORY* 95–96 (3rd ed. 1993).

based South could adversely impact their progress and viewed the South as an enemy of sorts.¹¹⁸ The corporate backing was promoted as support of social equality, but the reality was more complicated than it seemed.

Corporations and white Americans lost interest in Reconstruction, and politicians were no longer motivated to continue social change. Support to protect the rights of African Americans, poor whites in the South, and industrial workers in the North was desperately needed, but it disappeared. The government began to yield to economic powers, severely inhibiting democratic efforts.

The reforms implemented in the First Resurrection also failed because corporations tried to keep the government from interfering with their growth and treatment of immigrant workers. After the War, the Supreme Court protected business and limited regulation in a series of decisions that established that corporations also deserved Fourteenth Amendment protection. For example, in the *Railroad Commission Cases*, the Court gave railroad regulators and state governments warning that the due process clause would restrict the state regulatory authority over railroads.¹¹⁹ In *Chicago Milwaukee and St. Paul Railway Co. v. Minnesota*, the Court held that due process limited a state's ability to regulate railroad rates.¹²⁰ In *Lochner v. New York*, the Court held that the general right to make a contract in relation to one's business and the right to purchase or sell labor are part of the liberty protected by the Fourteenth Amendment, and that a state was not allowed to regulate the maximum number of hours a baker worked.¹²¹ In *Adkins v. Children's Hospital*, the Court held that an act fixing minimum wages for female employees in private

118. *Id.* at 96.

On nearly every delicate and disturbing economic issue of the day—taxation, the National Bank, the national debt, government bonds and their funding, railroads and their financing, regulation of corporations, government grants and subsidies to business, protective tariff legislation—on one and all the business community recognized in the unreconstructed South an antagonist of long standing . . . [T]he South could upset the new order. Under these circumstances, the Northern business community, except for the banking and mercantile interests[,] allied with the Democrats.

Id. As usual, Woodward continued, they used philanthropic purpose to convince the public. *Id.*

119. 116 U.S. 307, 331 (1886). In dicta, the Court changed its interpretation of the applicability of due process. *Id.* at 351–52. Justice Waite implied that due process applied to protect businesses with a public interest against confiscatory rate regulation. *Id.*

120. 134 U.S. 418, 456–57 (1890).

121. 98 U.S. 45, 53, 58 (1905).

employment was an unconstitutional interference with the freedom to contract.¹²²

Dylan describes this phenomenon by concluding that morality has nothing to do with politics.¹²³ Efforts for morality and social change in politics failed in the fight after Reconstruction. The groundwork was laid for America's second death caused by poor corporate treatment of workers and immigrants.

V. AMERICA'S SECOND DEATH: THE IMMIGRANTS, WORKERS, AND JOE HILL

The effects of corporate growth and influence in American society brought about in "America's Second Crucifixion" can be seen on the working class, particularly immigrant workers, in the period I call "America's Second Death." An evaluation of the struggles of immigrants and industrial workers in the twentieth century should begin with a look at Joe Hill.

Hill, an immigrant laborer, was convicted of murder based on circumstantial evidence and shot by a firing squad in Utah, making him a martyr to the International Workers of the World ("IWW" or "Wobblies") cause.¹²⁴ Dylan views Hill as a "[m]essianic figure"¹²⁵ saying:

His life story is heavy and deep Joe's beloved by all working-men nationwide—miners and meat cutters, sign painters and blacksmiths, plasterers and steamfitters, ironworkers whoever they were, he united them. And he fought for the rights of them all, risked his life to make things better for all the under-classed, the disadvantaged—the most poorly paid and mistreated workers in the country .

122. 261 U.S. 525, 560–62 (1923). The act interfered with Fifth Amendment guarantees as it prevented private employers and employees from bargaining for the best contractual terms. *Id.* at 560–61. The Court also held that the wage fixed by the act had no relation to the capacity of female employees, but rather was an invalid exercise of state police power because it attempted to establish an arbitrary amount necessary to provide women a living. *Id.* Further, the act required an employer to make an arbitrary payment to female employees without any causal connections to his business or the type of work the employee performed. *Id.* at 559.

123. DYLAN, *CHRONICLES*, *supra* note 3, at 45.

Don't give me any of that jazz about hope or nonsense about righteousness. Don't give me that dance that God is with us, or that God supports us. Let's get down to brass tacks. There isn't any moral order. You can forget that. Morality has nothing in common with politics.

Id.

124. *Id.* at 52.

125. *Id.*

. . . Everything in his life speaks of honor and fairness. He was a drifter and protector and at all times on foot patrol. To the politicians and industrialists who hated him, though, he was a hardened criminal and an enemy to society. For years they waited for an opportunity to get rid of him. Joe was judged guilty even before the trial began.¹²⁶

Dylan had long been a skeptic of the idea of a fair trial. His disdain for and distrust of the legal system is apparent in his lyrics, including his song about Emmett Till, a fourteen-year-old African-American boy who was murdered in Mississippi after reportedly flirting with a white woman.¹²⁷ Of Till's trial, Dylan says, "And so this trial was a mockery, but nobody seemed to mind."¹²⁸ In his song about Rubin "Hurricane" Carter he says, "The trial was a pig-circus, he never had a chance."¹²⁹ In these lyrics, Dylan shows his belief that judges and juries sometimes make up their minds based on previously-formed opinions rather than on the rule of law. The problem, of course, is that decisions made on this basis have the power to create judicial precedent and impact lives. The 1854 *Anthony Burns* case in which a fugitive slave was convicted and returned to Virginia;¹³⁰ the 1857 *Dred Scott* case holding that blacks could not be citizens of the United States;¹³¹ and the 1896 *Plessy v. Ferguson* case establishing the doctrine of separate but equal illustrate this point.¹³² Dylan and others believed that Hill's trial was political in nature:

A number of otherwise nonpolitical legal proceedings have become political trials because their outcome was determined by political considerations A[n] . . . example of [this] type . . . is the pre-World War I murder trial of Joe Hill, troubadour of the radical Industrial Workers of the World. The Utah authorities who arrested Hill without knowing who he was did so because, at the time, the

126. *Id.* at 52–53

127. See Lisa Cozzens, *The Murder of Emmett Till*, WATSON.ORG, <http://www.watson.org/~lisa/blackhistory/early-civilrights/emmett.html> (last visited Oct. 18, 2011).

128. BOB DYLAN, *The Death of Emmett Till*, on THE BOOTLEG SERIES VOL. 9: THE WITMARK DEMOS: 1962-1964 (Columbia Records 2010).

129. DYLAN, *Hurricane*, *supra* note 1.

130. See *supra* note 36.

131. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

132. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

evidence pointed to him. His eventual conviction, though, was due to his IWW ties.¹³³

According to Phillip Foner, “Joe Hill was the victim of a colossal frame-up by certain elements in the business community of Utah (mainly the ‘copper barons’) He was described as a ‘thorn in the side of the master class.’”¹³⁴

The vast majority of IWW members were believers in the value of the individual and the integrity of his personal being. They built an organization without strong central authority, which allowed freedom to the individual member.¹³⁵ This lack of authoritarianism is part of the reason why Hill is such a hero to Dylan.

Hill symbolizes the challenges faced by early twentieth century immigrants who were trying to find a place in America. Like African Americans abused and misused by plantation owners, immigrants were discriminated against, exploited by industrial bosses, and neglected by politicians. Sweatshops flourished; industrial accidents caused tragedies such as the Triangle Fire in 1911;¹³⁶ and laws mandating a minimum wage, regulating maximum working hours regulations, and prohibiting child labor did not exist. Workers had virtually no rights or protections, and working conditions were atrocious. In 1906, Upton Sinclair published his social commentary on the plight of laborers, *The Jungle*, in which he described the conditions suffered by meatpacking workers:

There are able-bodied men here who work from early morning until late at night, in ice-cold cellars with a quarter of an inch of water on the floor—men who for six or seven months in the year never see the sunlight from Sunday afternoon till the next Sunday morning—and who cannot earn three hundred dollars in a year.¹³⁷

133. Michal R. Belknap, *Introduction* to *AMERICAN POLITICAL TRIALS*, at xviii (Michael R. Belknap ed., 1994). Criminal prosecutions like Hill’s devastated the IWW. See *id.* at xxi.

134. Vernon H. Jensen, *The “Legend” and the “Case” of Joe Hill*, *DIALOGUE: J. MORMON THOUGHT*, Spring 1967, at 97, 104.

135. *Id.* at 108.

136. Jennifer Guglielmo, *Sweatshop Feminism: Italian Women’s Political Culture in New York City’s Needle Trades, 1890–1919*, in *SWEATSHOP USA* 185, 191 (Daniel E. Bender & Richard A. Greenwald eds., 2003). The Triangle Shirtwaist Factory fire in New York City occurred in 1911 and killed 146 Italian and Jewish women and girls. *Id.* This incident radicalized women’s unions like the International Ladies’ Garment Workers’ Union (ILGWU). *Id.*

137. UPTON SINCLAIR, *THE JUNGLE* 14 (1906) (describing the conditions of the Chicago meatpacking industry and the struggle of an immigrant worker in an industrial workforce).

Dylan reflects on these working conditions in *A Hard Rain's A-Gonna Fall*, when he states, "I saw a room full of men with their hammers a bleedin'," ¹³⁸ evoking a gruesome image of hardworking men suffering as they perform tough physical labor.

Throughout this period of history, from the brutal and discriminatory treatment of African Americans to the unsafe working conditions for immigrants, discriminatory practices and an economic order based on inequality was the norm. Corporations relied upon constitutional provisions not intended for their benefit as weapons to overturn regulations designed to improve worker safety, and land owners were permitted to mistreat and subjugate African American workers. A turn towards reconstructive measures was not seen until the 1960s.

VI. SECOND RECONSTRUCTION: THE EARLY 1960S

"[A]fter weeks and weeks of hangin' around I finally got a job in New York town in a bigger place, bigger money too even joined the union and paid m' dues" ¹³⁹

The rise of union organization and improved working conditions in the mid-1900s allowed a "Second Reconstruction." Statutory minimum wages were introduced nationally in 1938. ¹⁴⁰ The Great Depression ended child labor nationwide; adults had become so desperate for jobs that they were willing to work for the same wages as children. ¹⁴¹ In 1938, the Fair Labor Standards Act placed limits on many forms of child labor, among other things. ¹⁴²

On December 5, 1955, President Dwight D. Eisenhower inspired union delegates, gathered in New York, to witness the merger of the American Federation of Labor and the Congress of Industrial Organization. He proclaimed, "You are more than union members bound together by a common goal of better wages, better working conditions, and protection of your security. You are American citizens." ¹⁴³

138. BOB DYLAN, *A Hard Rain's A-Gonna Fall*, on THE FREEWHEELIN' BOB DYLAN (Columbia Records 1962).

139. BOB DYLAN, *Talkin' New York*, on BOB DYLAN (Columbia Records 1962).

140. GERALD STARR, MINIMUM WAGE FIXING 5 (1981).

141. *End Child Labor*, INT'L INITIATIVE ON EXPLOITATIVE CHILD LABOR, <http://endchildlabor.org/?cat=29> (last visited Oct. 18, 2011).

142. STARR, *supra* note 142, at 5.

143. Dwight D. Eisenhower, Telephone Broadcast to the AFL-CIO Merger Meeting in New York City (Dec. 5, 1955), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=10394#axzz1d8w0JsGm>.

The labor movement gained force after this merger, allowing workers to move into the middle class.¹⁴⁴

With the development of a strong labor movement and a middle class in American society, the tide began to turn for low income whites and African Americans. Politically, blue-collar workers favored the Democrats by a four to one margin,¹⁴⁵ while “[t]he wealthiest stratum of Americans voted heavily for the GOP, as did most voters with college degrees and professional occupations.”¹⁴⁶ World War II allowed for a greater inclusion of blacks into American society, as they were needed to fill the better “white” jobs of soldiers serving in combat overseas. After World War II, increasing numbers of blacks finished high school and gained admittance to historically white colleges, which caused the number of African Americans in the skilled trades and in professions like medicine and education to increase dramatically.¹⁴⁷

With these social changes came the development of a civil rights movement, a period I describe as the “Second Reconstruction” of Dylan’s cycles of revolution. One new civil rights bill followed another, each bolder and more aggressive than the last, and each better than the previous in terms of undoing Supreme Court decisions handed down during the Jim Crow era. The Civil Rights Act of 1957 established the Civil Rights Commission;¹⁴⁸ the Civil Rights Act of 1960 established federal inspection of local voter registration polls;¹⁴⁹ and the Civil Rights Act of 1964 prohibited discrimination based on race, color, religion, sex, and national origin by federal and state governments as well as some public places.¹⁵⁰

144. MAURICE ISSERMAN & MICHAEL KAZIN, *AMERICA DIVIDED: THE CIVIL WAR OF THE 1960S* 14 (2008).

In reality, for millions of workers—in mines, in factories, and at construction sites—work remained both hard and dangerous. But, thanks to newly powerful labor union, it was better compensated than ever before. The labor movement helped lift millions of wage earners into the middle class.

Id.

145. *Id.* at 18.

146. *Id.*

147. *Id.* at 23–24.

148. Civil Rights Act of 1957, 42 U.S.C. § 1975 (2006) (establishing the United States Commission on Civil Rights).

149. Civil Rights Act of 1960, 42 U.S.C. §§ 1971, 1974, 1974a, 1974c (2006). The Civil Rights Act of 1960 made it a crime to obstruct an attempt to register to vote or to impede someone from actually voting. *See* 42 U.S.C. §§ 1971(a)(2), 1974 (2006).

150. Civil Rights Act of 1964, 42 U.S.C. § 2000a(a) (2006).

During this period, the United States Supreme Court gradually started to overturn Jim Crow laws. In *Boynton v. Virginia*, for example, an African-American interstate bus passenger was refused service in a bus terminal restaurant.¹⁵¹ His refusal to leave the restaurant after being ordered to do so violated a state statute.¹⁵² The Supreme Court held that if the bus terminal and restaurant were operated as an integral part of a bus carrier's transportation service for interstate passengers, any state statute that refused African Americans service in those facilities violated the federal constitutional rights of the passengers, undermining state laws for segregation.¹⁵³

Similarly, in *Peterson v. City of Greenville*, the Supreme Court invalidated a South Carolina law allowing discrimination in restaurants.¹⁵⁴ The manager of a drugstore, in compliance with a city ordinance that disallowed serving whites and blacks in the same room, asked some African-American youths to move from his lunch counter.¹⁵⁵ They refused and were convicted of violating the ordinance.¹⁵⁶ The Supreme Court overturned the convictions and declared the law invalid:

When a state agency passes a law compelling persons to discriminate against other persons because of race, and the State's criminal processes are employed in a way which enforces the discrimination mandated by that law, such a palpable violation of the Fourteenth Amendment cannot be saved by attempting to separate the mental urges of the discriminators.¹⁵⁷

This case shows the Supreme Court's gradual validation of the Fourteenth Amendment as a means of equalizing society.

In the 1964 case of *Heart of Atlanta Motel, Inc. v. United States*, the Supreme Court found the Civil Rights Act of 1964, reviving the ban on discrimination in public accommodations, to be constitutional.¹⁵⁸ The Heart of Atlanta Motel refused to rent rooms to black patrons which interfered with interstate commerce because it prevented blacks from spending money.¹⁵⁹ The Supreme Court held that Con-

151. 364 U.S. 454, 454-55 (1960).

152. *Id.* at 456.

153. *Id.* at 463-64.

154. 373 U.S. 244 (1963).

155. *Id.* at 245-46.

156. *Id.* at 246.

157. *Id.* at 248.

158. 379 U.S. 241, 279 (1964).

159. *Id.* at 273.

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gress acted within its jurisdiction of the interstate commerce clause in passing the Civil Rights Act of 1964.¹⁶⁰

In 1968, in *Jones v. Mayer*, the Court held that Congress could regulate the sale of private property in order to prevent racial discrimination.¹⁶¹

A long line of positive Supreme Court cases gave newfound optimism to African Americans hoping for change and equality. Dylan characterized the time by saying “things were happening in an Olympian kind of way.”¹⁶²

Despite these progressive developments in the courts, Dylan remained characteristically dubious. He looked over towards the capital and grumbled, “Think they’re listenin’. No. They ain’t listenin’ at all.”¹⁶³ Dylan believes the changes in society were not motivated by political righteousness. Instead, the voices for change had grown too loud for the government and justice system to ignore; the people were standing up for their rights. When people stopped demanding equality, Dylan believed society would degenerate again and a new group would be subjected to discrimination.

Thus, Dylan believed that the Second Resurrection would end like the first, with a loss of interest in social change and a gradual deterioration of progress. Dylan’s cycles of revolution continue into degradation despite the monumental achievements of the civil rights movement. “America’s Third Crucifixion” occurred in 1966; and “America’s Third Death” cemented the fallout of the crucifixion by 1968.

VII. THIRD CRUCIFIXION: THE RIOTS

*“Four months later, the ghettos are in flame.”*¹⁶⁴

The period I call “America’s Third Crucifixion” occurred when, as in the period following “America’s First Resurrection,” people with power and authority began to lose interest in the civil rights movement:

Negro leaders were divided among themselves and their followers milled in confusion. White liberals and the New Left thought Viet-

160. *Id.* at 279.

161. 392 U.S. 409 (1968).

162. NO DIRECTION HOME: BOB DYLAN (Spitfire Pictures 2005).

163. TIM RILEY, *HARD RAIN: A DYLAN COMMENTARY* 77 (1999).

164. DYLAN, *Hurricane*, *supra* note 1.

nam was more important And over the college campus the civil rights trumpet made an uncertain sound, or none at all.¹⁶⁵

The Civil Rights Bill of 1966, which called for open housing and protection of Civil Rights workers, was defeated. President Johnson's concentration on winning the Vietnam War caused him to stop focusing and spending on social causes.¹⁶⁶ "The Office of Economic Opportunity, the agency overseeing the poverty program [in Johnson's 'Great Society,'] received only 1.5 percent of the federal budget for all its programs in the years from 1965 to 1970."¹⁶⁷

The prospects for liberal reform were worsened by declining white support for the civil rights struggle. In 1964, before the riots, sixty-eight percent of northern whites supported the Johnson administration's Civil Rights initiatives.¹⁶⁸ Throughout the country there were eleven major and thirty-two minor riots in the summer of 1966; the next summer, there were twenty-five major and thirty minor riots, including the bloodiest outburst of the decade in Detroit where forty-three people died in July 1967.¹⁶⁹ According to Isserman and Kazin, in their book *America Divided: The Civil War of the 1960s*,

[b]y 1966, 52 percent of northern whites believed the government was pushing too fast for integration. As long as "civil rights" had been seen as a regional problem, a battle fought between white and black citizens of distant states like Alabama and Mississippi, white ethnic voters in northern cities were prone to support or at least tolerate the liberal politicians who voted for legislation banning racial discrimination. But when confrontations broke out in northern cities between whites and blacks over issues of immediate local concern—housing, jobs, schools, political clout—and when nonviolent demonstrations gave way to or were accompanied by black rioting, the equation changed.¹⁷⁰

They conclude, "Goldwater's call to preserve social and moral order and to practice self-reliance echoed the sentiments of many a Puritan minister, slave-holding planter, and self-made industrialist. . . .

165. WOODWARD, *supra* note 118, at 176.

166. ISSERMAN & KAZIN, *supra* note 146, at 198.

167. *Id.* at 203.

168. *Id.* at 210.

169. *See id.* Various riot locations included: Philadelphia, August 1964; Watts, Los Angeles, August 1965; Hough, Cleveland, July 1966; Newark, July 1967; Plainfield, July 1967; Detroit, July 1967; Chicago, April 1968; District of Columbia, April 1968; Baltimore, April 1968; Omaha, June 1968. *Id.* at 144–45, 184, 206–08, 238, 318–19.

170. *Id.* at 210. "For millions of white Americans of middling income, 'law and order' became both a cry of outrage at the political, cultural, and social upheavals of the 1960s, and the crux of the solution to them." *Id.* at 213.

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[T]heir appeals to meaner sentiments, particularly white racism, helped the movement grow among groups the Right had never attracted before.”¹⁷¹

Dylan, as usual, had a different and critical take on what he saw around him:

The events of the day, all the cultural mumbo jumbo were imprisoning my soul — nauseating me — civil rights and political leaders being gunned down, the mounting of the barricades, the government crackdowns, the student radicals and demonstrators versus the cops and the unions — the streets exploding, fire of anger boiling — the contra communes — the lying, noisy voices — the free love, the anti-money system movement — the whole shebang. The common destiny of the human being getting thrown off course. It’s all one funeral song but there’s a certain imperfection in the themes.¹⁷²

As he watched American society throw away the hard won progress of the civil rights movement, Dylan could not help but see the cycle continuing. He recognized the pitting of the youthful rage of students against the deep funded pockets of special interests. The reemergence of hatred in American hearts was a harkening back to dark times in American history.¹⁷³

VIII. THIRD DEATH: CORPORATE INFLUENCE IN THE DEBATE ABOUT THE NEW IMMIGRANTS AND THE ANTI-UNION MOVEMENT

*“I dreamt a monstrous dream/Something came out of the sea/Swept through the land of the rich and the free.”*¹⁷⁴

The period I call “America’s Third Death” can be characterized by the rise of corporate influence on politics, a phenomenon first seen with the development of corporate power after the Civil War. Like that era, today’s corporations maintain enormous power and influence because of their deep pockets. Nowhere is that power more evi-

171. *Id.*

172. DYLAN, *CHRONICLES*, *supra* note 3, at 85, 109.

173. In *Chronicles*, Dylan writes:

By 1968 . . . America was wrapped in a blanket of rage. Students at universities were wrecking parked cars, smashing windows. The war in Vietnam was sending the country into a deep depression. The cities were in flames, the bludgeons were coming down. Hard-hat union guys were beating kids with baseball bats . . . Leftist kids who read Che Guevara instruction booklets were out to topple the economy.

Id. at 113–14.

174. DYLAN, *Cross the Green Mountain*, *supra* note 2.

dent than in the modern issues of illegal immigration and public sector unions.

A. Corporate Grip on Politicians

*“Now, the man on the stand he wants my vote, he’s a runnin for office on the ballot note, he’s out there preachin in front of the steeple, tellin me he loves all kinds-a people. He’s eatin’ bagels, he’s eatin’ pizza, he’s eatin’ chitlins, he’s eatin’ bullshit!”*¹⁷⁵

In Dylan’s eyes, politicians are motivated by self-interest instead of ideology.¹⁷⁶ He believes that politicians can be persuaded to introduce and help pass legislation helpful to corporate or individual sponsors.¹⁷⁷ Thus, he believes that American policy is affected by corporate interests.¹⁷⁸

Corporations have tremendous influence in the United States government, as they are able to donate vast amounts of money to form political action groups, and affect the outcomes of elections due to their insider status. Some Supreme Court rulings have helped corporations expand their political power.

In *FEC v. National Conservative Political Action Committee*, the Democratic National Convention, the Democratic Party, and an individual sued asking the Court to declare that it was a criminal offense for a political action committee to spend more than \$1000 on a candidate receiving public funding.¹⁷⁹ The suit was based on 26 U.S.C. § 9012(f); the petition sought to affirm the constitutionality of that section.¹⁸⁰ The Court held that Section 9012(f) was unconstitutional on its face because it violated the First Amendment.¹⁸¹

One year later, in *FEC v. Massachusetts Citizens for Life*, the Court held that the section of the Federal Election Campaign Act (FECA) that prohibited direct expenditure of corporate funds in connection with any election violated the First Amendment as ap-

175. DYLAN, *I Shall Be Free*, *supra* note 93.

176. *See* DYLAN, *CHRONICLES*, *supra* note 3, at 45.

177. *See Flanagan*, *supra* note 76.

178. *See Flanagan*, *supra* note 76 and accompanying text. Even today, businesses continue to use provisions of the Constitution initially intended to support individual rights for their own interests. “Businesses now wield the Bill of Rights in much the same way that the Fourteenth Amendment was used during the Progressive era when corporations impeded state governmental regulation with constitutional roadblocks.” Mayer, *supra* note 74, at 577.

179. 470 U.S. 480, 482–83 (1985).

180. *Id.* at 507 (White, J., dissenting).

181. *Id.* at 501.

plied to a nonprofit corporation.¹⁸² The FEC had brought the suit seeking to hold a nonprofit corporation liable under the Federal Election Campaign Act for publishing a newsletter urging its readers to vote pro-life.¹⁸³

In 2003, in the case of *FEC v. Beaumont*, the Court held that regulatory burdens on political action committees, including restrictions on their ability to solicit funds, do not render a political action committee unconstitutional as an advocacy corporation's sole avenue for making political contributions.¹⁸⁴ In this case, a nonprofit advocacy group that counseled pregnant women and urged alternatives to abortion, brought an action against the FEC challenging the constitutionality of FECA and the related regulations regarding prohibitions on corporate expenditures and contributions in connection with federal elections.¹⁸⁵ The Court held that the direct contribution prohibition on nonprofit advocacy groups is consistent with the First Amendment.¹⁸⁶

Another recent Supreme Court case, *FEC v. Wisconsin Right to Life*,¹⁸⁷ concerned the Bipartisan Campaign Reform Act's prohibition on the use of corporate funds to finance "electioneering communications" during periods preceding federal elections.¹⁸⁸ The Court held that the Act violated the free speech rights of a nonprofit ideological advocacy corporation when applied to the corporation's issue-advocacy advertisements opposing the filibustering of judicial candidates in the United States Senate.¹⁸⁹

The Supreme Court's decision in the 2010 case of *Citizens United v. FEC*¹⁹⁰ gave corporations a greater ability to influence politics, holding that political speech does not lose First Amendment protection if it is from a corporate source.¹⁹¹ The Court found that the First Amendment protects the right of corporations to petition legislative

182. 479 U.S. 238, 263 (1986). The corporation which published the newsletter had been formed for the express purpose of promoting political ideas, had no shareholders or other persons who had a claim on its assets or earnings, was not an established business, corporation or labor union, and did not accept contributions from such entities. *Id.* at 264.

183. *Id.* at 241, 243.

184. 539 U.S. 146, 163 (2003).

185. *Id.* at 149–50.

186. *Id.* at 163.

187. 551 U.S. 449 (2007).

188. *Id.* at 464.

189. *Id.* at 480–82.

190. 130 S. Ct. 876 (2010).

191. *Id.* at 900.

and administrative bodies and that the government may not, under the First Amendment, suppress political speech on the basis of a speaker's corporate identity.¹⁹²

These rulings allow the economic interests of corporations to shape the political agenda, minimizing the influence of workers, minorities, weak or unrepresented groups in society, and even ordinary citizens.

B. Corporate Participation in the Battle over Illegal Immigration

*"You might as well not show up on the street 'less you wanna draw the heat."*¹⁹³

What to do with undocumented workers is a polarizing issue in the United States today. The mark of corporate interests is evident on both sides of the issue. Enforcement of illegal immigration laws can create bigger markets for some kinds of corporations, namely private prison companies.

A 2010 National Public Radio (NPR) report reveals that Arizona Senate Bill 1070 was backed by the private prison industry.¹⁹⁴ The bill

192. *Id.* (overruling the Court's prior decision in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990)). The Court also held that a federal statute barring corporations from using general treasury funds to make independent expenditures that expressly advocate the election or defeat of a candidate violated the First Amendment political speech rights of a nonprofit corporation, overruling *McConnell v. FEC*, 540 U.S. 93 (2003); and that provisions of the Bipartisan Campaign Reform Act of 2002 requiring televised electioneering communications funded by anyone other than a candidate to include a disclaimer identifying the person or entity responsible for the content of the advertising, and requiring any person spending more than \$10,000 on electioneering communications within a calendar year to file a disclosure statement with the Federal Election Commission, does not violate the First Amendment protection, as applied to a nonprofit corporation that wished to distribute on cable television a film regarding a candidate seeking nomination in the next presidential election. *Id.* at 912–15.

193. DYLAN, *Hurricane*, *supra* note 1.

194. Laura Sullivan, *Prison Economics Help Drive Ariz. Immigration Law*, NPR (Oct. 28, 2010), <http://www.npr.org/templates/story/story.php?storyID=130833741>. Arizona Assembly Bill 1070 has been stayed by a federal court. *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011). Utah, Indiana, and Georgia have introduced similar bills that have been temporarily suspended by federal courts. H.B. 87, 151st Gen. Assemb., Reg. Sess. (Ga. 2011); S.B. 590, 117th Gen. Assemb., 1st Reg. Sess. (Ind. 2011); S.B. 60, 2011 Gen. Sess. (Utah 2011). Alabama's new law cracking down on illegal immigration is widely considered the toughest such law in the nation. H.B. 56, 2011 Leg. Reg. Sess. (Ala. 2011). It was challenged in federal court on July 8, 2011. Richard Fausset, *Alabama Immigration Law Challenged in Federal Court*, L.A. TIMES (July 9, 2011), <http://articles.latimes.com/2011/jul/09/nation/la-na-alabama-immigration-20110709>.

amps up the pursuit and prosecution of undocumented workers in Arizona “send[ing] hundreds of thousands of illegal immigrants to prison in a way never done before. And it could mean hundreds of millions of dollars in profits to private prison companies responsible for housing them.”¹⁹⁵ The business motive for private prison companies is obvious; private prisons can be filled with undocumented workers and, with cause, their families. As it is normal for private prisons to charge by the day, each individual who spends time in a private prison contributes to the prison company’s bottom line.

Alarmingly, NPR reports that there is a short paper trail leading from the private prison industry to the state officials behind legislation seeking to ramp up the enforcement of illegal immigration laws.¹⁹⁶ Former Arizona state senator Russell Pearce was instrumental in drafting the bill and sits on an American Legislative Exchange Council (ALEC) task force, an organization that was influential in drafting the legislation.¹⁹⁷ It is a membership organization of state legislators and powerful corporations and associations including ExxonMobil, the NRA, and Corrections Corporation of America (CCA)—the largest private prison company in the country.¹⁹⁸ CCA documents, reviewed by NPR, reveal that executives believe immigrant detention is their next big market.¹⁹⁹ According to NPR, CCA used groups such as ALEC to push its agenda through state governments.²⁰⁰

195. Sullivan, *supra* note 196. NPR spent several months analyzing hundreds of pages of campaign finance reports, lobbying documents and corporate records of private prison companies’ plan to lock up illegal immigrants. *Id.* “What they show is a quiet, behind-the-scenes effort to help draft and pass Arizona Senate Bill 1070 by an industry that stands to benefit from it: the private prison industry.” *Id.* The plan became Arizona’s immigration law. *Id.* “The law is being challenged in the courts. But if it’s upheld, it requires police to lock up anyone they stop who cannot show proof they entered the country legally.” *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*; see also Anna Gorman, *Family Detention Site in Works*, L.A. TIMES (May 18, 2008), <http://articles.latimes.com/2008/may/18/nation/na-detention18>; Margaret Talbot, *The Lost Children*, NEW YORKER (Mar. 3, 2008), http://www.newyorker.com/reporting/2008/03/03/080303fa_fact_talbot; *ACLU Challenges Prison-Like Conditions at Hutto Detention Center*, ACLU (Mar. 6, 2007), <http://www.aclu.org/immigrants-rights-racial-justice/aclu-challenges-prison-conditions-hutto-detention-center>; *T. Don Hutto Residential Center*, CCA, <http://www.cca.com/facility/t-don-hutto-residential-center> (last visited Oct. 19, 2011).

*"How many times can a man turn his head pretending he doesn't see?"*²⁰¹

The mark of corporate influence is evident on both sides of the issue of illegal immigration. Undocumented workers provide a cheap labor force for some types of corporations. The United States workforce presently includes over eight million undocumented workers who accept jobs and working conditions that American citizens normally would not tolerate.²⁰² "[I]n 2000, of the 111 people who died on the job in New York City, 74 were immigrant workers."²⁰³ Likewise, one study found that immigrant dishwashers in Long Island earned an average of \$2.50 an hour and worked over 75 hours a week in 1999.²⁰⁴

Undocumented workers have evolved to become an integral part of the American economy and a crackdown would hurt many corporations and businesses. Yet they struggle to obtain a political voice or representation.

This use of corporate power to maintain wage disparity, and further the economic interests of businesses is another example of corporate influence on the political agenda. Likewise, enforcement of immigration bills like the one in Arizona will benefit an industry—the private prison system—and cause millions of people living and working in the United States to face discrimination.

This self-interest of corporations, on both sides of the issue of immigration, displays America's "Third Death," the death of the individual voice.

C. Corporate Muscle in the Public Sector Union Battle

*"Well, it's sundown on the union, And what's made in the U.S.A,
Sure was a good idea, 'Til greed got in the way, You know, capitalism
is above the law, It say, It don't count 'less it sells. When it costs too
much to build it at home, You just build it cheaper someplace else"*

....

201. BOB DYLAN, *Blowin' in the Wind*, on THE FREEWHEELIN' BOB DYLAN (Columbia Records 1962).

202. D. Carolina Nunez, *Fractured Membership: Deconstructing Territoriality to Secure Rights and Remedies for the Undocumented Worker*, 2010 WIS. L. REV. 817, 818 (2010).

203. *Id.* at 818 n.2.

204. *Id.*

*"The unions are big business, friend, And they're goin' out like a dinosaur."*²⁰⁵

In the modern age, Dylan believes unions are ineffective because they have lost their power to corporate interests. As in the period during the early twentieth century, when immigrant union organizers like Joe Hill were persecuted, corporations are trying to limit and even eliminate unions.²⁰⁶ Unions appear to be a dying source of power for the workingman; corporate influence has proved more beneficial to the interests of politicians. Corporations see unions as a problem because they cause corporations to lose money by ensuring protection of workers' rights and pay. Further, many union members vote the Democratic ticket which often goes against corporate interests, and unions have money to influence members towards matters that contradict the interests of corporations.

D. Public Sector Union Disputes in Wisconsin Show Corporate Involvement in Government

Corporate influence is present in the public sector anti-union measures currently spreading across state governments. In 2011, the debate over union rights came into focus with the anti-union legislation in Wisconsin and the ensuing weeks of demonstrations and protests.²⁰⁷ A *New Yorker* article from August 30, 2010, reported that Koch Industries—a private company that owns Brawny, Dixie Cups, Lycra, Georgia Pacific, and Stainmaster Carpet—was one of the largest contributors to Wisconsin Governor Scott Walker's gubernatorial campaign.²⁰⁸ Walker was the major proponent of Wisconsin's anti-union proposal.²⁰⁹

205. BOB DYLAN, *Union Sundown, on* INFIDELS (Columbia Records 1983).

206. Andrew Stern, *Analysis: Koch Brothers a Force in Anti-Union Effort*, REUTERS (Feb. 26, 2011), <http://www.reuters.com/article/2011/02/26/us-usa-wisconsin-koch-idUSTRE71P28W20110226>; see also Eric Lipton, *Billionaire Brothers' Money Plays a Role in the Wisconsin Dispute*, N.Y. TIMES (Feb. 21, 2011), <http://www.nytimes.com/2011/02/22/us/22koch.html>. Americans for Prosperity, founded and funded by the Koch brothers, is now working with state officials in Indiana, Ohio, and Pennsylvania to introduce legislation to limit and eliminate unions. *Id.*

207. Rmuse, *The Wisconsin Protestors Meet the Iron Fist of Koch Industries*, POLITICUSUSA (Feb. 19, 2011), <http://www.politicususa.com/en/wisconsin-koch-industries>.

208. See Lipton, *supra* note 208; Jane Mayer, *Covert Operations*, NEW YORKER, (Aug. 30, 2010), http://www.newyorker.com/reporting/2010/08/30/100830fa_fact_mayer.

209. See Scott Bauer, *Scott Walker, Wisconsin Republicans' Plan To Cut Worker Rights Draws Powerful Protests*, HUFFINGTON POST (Feb. 16, 2011), http://www.huffingtonpost.com/2011/02/16/scott-walker-wisconsin-re_n_824000.html;

Koch Industries is America's second largest privately held company, with estimated annual revenues in the billion-dollar range, and has been called "the Standard Oil of our time."²¹⁰ Koch Industries does not employ union workers.²¹¹ Since 1998, the Koch brothers have spent more than \$50 million on lobbying efforts to influence the political agenda.²¹² They are the major donors behind libertarian think tanks, such as Americans for Prosperity, and libertarian-leaning political organizations like the Tea Party.²¹³ The Koch brothers have focused their efforts in certain states, including Wisconsin, Indiana, Pennsylvania, and Ohio, all of which have seen the proposal or implementation of anti-union bills.²¹⁴

Think Progress, a nonpartisan organization that is a project of the Center for American Progress Action Fund, reported that "the greatest ally to Walker is . . . Koch Industries."²¹⁵ They went on to state that, during the protests in Madison, Koch fronts bussed in Tea Party protesters to support Governor Walker.²¹⁶ The Think Progress report then continued:

MSNBC's Ed Schultz reported on the involvement of . . . the Koch-financed Americans for Prosperity in the pro-Walker protest The American Legislative Exchange Council, another Koch-funded group, advised Walker and the GOP legislature on its anti-labor legislation and its first corporate tax cuts . . . Koch's Americans for Prosperity group has launched a new website and petition called www.standwithwalker.com. The new site attacks all collective bargaining, not just for public sector unions. [The group] also declares: In fact, every state should adopt Governor Scott Walker's common sense reforms.²¹⁷

While these practices are not illegal because of the corporate protections given by the Supreme Court,²¹⁸ it shows the ways and extent to which corporations can influence politics in spite of popular protests. The American Legislative Exchange Council is the same group

Lee Fang, *Koch Industries Slashed WI Jobs, Helped Elect Scott Walker, Now Orchestrating Pro-Walker Protest*, THINK PROGRESS (Feb. 18, 2011, 5:00 PM), <http://thinkprogress.org/economy/2011/02/18/145274/business-teaparty-wisconsin/>.

210. See Mayer, *supra* note 210.

211. See Rmuse, *supra* note 209.

212. See Mayer, *supra* note 210.

213. See *id.*

214. See Lipton, *supra* note 208.

215. See Fang, *supra* note 211.

216. *Id.*

217. *Id.*

218. See *Citizens United v. FEC*, 130 S. Ct. 876, 914 (2010).

that was instrumental in shaping Arizona's Senate Bill 1070 that clamps down on undocumented workers.²¹⁹

Former Wisconsin Democratic Senator Russ Feingold told the Huffington Post that Governor Walker is "just acting on a long-time corporate wish: the fantasy of destroying unions."²²⁰ Feingold is launching a new political action committee called Progressives United, aimed at combating the influence of corporate power in politics.²²¹ Feingold has declared that Republicans are trying to pit private workers against their public counterparts, in "an attempt to divide and conquer."²²² He stated:

Surely, there is enormous reason for people in the private sector to be frustrated—and particularly working people who have had their jobs shipped overseas by trade agreements that have been backed by these big corporate interests that are benefiting from *Citizens United*. But the idea here on the right and the corporate side is to divide working people against each other, to turn private employees against public employees out of some kind of resentment.²²³

Dylan reinforces the strength of corporations, declaring his firm belief that capitalism is above the law.²²⁴ He regrets this corporate influence on politics because he believes people should have more of a voice instead of huge economic powers. In his song *Workingman's Blues*, he says:

Meet me at the bottom, don't lag behind
Bring me my boots and shoes
You can hang back or fight your best on the frontline
Sing a little bit of these workingman's blues

. . . .

I can see for myself that the sun is sinking
How I wish you were here to see

219. See *Sullivan*, *supra* note 176.

220. Amanda Terkel, *Wisconsin Governor Scott Walker Faces Backlash For Threatening Public Workers With National Guard*, HUFFINGTON POST (Feb. 16, 2011), http://www.huffingtonpost.com/2011/02/16/wisconsin-governor-scott-walker-backlash-public-workers_n_823901.html.

221. See *About*, PROGRESSIVE UNITED, <http://www.progressivesunited.org/about/our-mission> (last visited Oct. 19, 2011).

222. Terkel, *supra* note 222.

223. *Id.*

224. DYLAN, *Union Sundown*, *supra* note 207.

Tell me now, am I wrong in thinking
That you have forgotten me?²²⁵

These lyrics show Dylan's identification with the plight of the union man, the laborer, and the immigrant.²²⁶ Although he has not written any songs concerning the recent undocumented worker and public sector union legislation, it is clear that he would see the influence of corporations that undermines workers as part of a cycle of revolution that is reflective of other discriminatory periods in American history.

CONCLUSION

*"In the courtroom of honor, the judge pounded his gavel, To show that all's equal and that the courts are on the level, And that the strings in the books ain't pulled and persuaded, And that even the nobles get properly handled."*²²⁷

Dylan said that the 1960s were a lot like the 1860s; he believed that periods of social change repeated themselves. On this note he said, "The age that I was living in didn't resemble [the Civil War], but yet it did in some mysterious and traditional way. Not just a little bit, but a lot."²²⁸

During America's First Reconstruction there was great optimism and opportunity for change. Unfortunately, powerful members of society used their influence to make inroads to preserve the status quo. This was accomplished by maintaining discrimination through Jim Crow and allowing deplorable working conditions for immigrant workers. Ultimately, the climate in America changed again with the rise of unions and the middle class, bringing about the Second Reconstruction in the early 1960s when historic Civil Rights legislation was introduced. That period quickly ended, however, and corporations stepped in and started to reassert control over American society through their wealth, political connections, and lobbying efforts.

225. BOB DYLAN, *Workingman's Blues #2*, on MODERN TIMES (Columbia Records 2006).

226. "They complained in the East, They are paying too high, They say that your ore ain't worth digging, That it's much cheaper down, In the South American towns, Where the miners work almost for nothing." BOB DYLAN, *North County Blues*, on THE TIMES THEY ARE A-CHANGIN' (Columbia Records 1963).

227. BOB DYLAN, *The Lonesome Death of Hattie Carroll*, on THE TIMES THEY ARE A-CHANGIN' (Columbia Records 1964).

228. DYLAN, CHRONICLES, *supra* note 3, at 86.

The cycles of political and social upheaval Dylan observed terminated in eras of reconstruction. The cycles of change Dylan observed in American history succinctly leave off at a time where a Third Reconstruction, the end of corporate control over politics, may be imminent.

Although Dylan focuses on how history repeats itself, he retains a small measure of hope: “But if all of us folks that thinks alike, if we gave all we could give. We could make this great land of ours a greater place to live.”²²⁹

Unlike leaders Dylan recognized during the Civil War and the origination of unions in the early part of the twentieth century, he has not distinguished a leader that could take on the fight to restore the individual’s voice in politics. Society is now more fragmented and the issues are very different from those involving slavery and workers’ rights.

The role of the Court through Dylan’s cycles of revolution is remarkable. The Court played an important part in the divisions that prompted the Civil War through its interpretations of the Fugitive Slave Acts. It also ensured the continuation of Jim Crow laws through its decisions allowing those laws to stand; perpetuated the abysmal treatment of immigrant workers by declaring laws protecting their safety to be unconstitutional; set the civil rights movement on its way by upholding the twentieth century’s Civil Rights Acts; and has extended power and influence to corporations throughout our nation’s history. It will be fascinating to see the role the Court plays in the current uprising for social change. Inevitably, state laws permitting undocumented workers to be arrested and public sector unions to be abolished will go before the Court. I am hopeful that those decisions will bring about America’s Third Resurrection rather than simply extend its death.

229. DYLAN, *The Death of Emmett Till*, *supra* note 130.